

Comptroller General
of the United States

Washington, D.C. 20548

147849⁶41

Decision

Matter of: Victor Graphics, Inc.

File: B-249297

Date: October 19, 1992

Thomas H. Hicks for the protester,
Kerry L. Miller, Esq., Government Printing Office, for the
agency,
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where solicitation required printing of a monthly publication within 27 workdays, information showing that the protester had made late deliveries under a number of recent contracts provided a reasonable basis for concluding that protester would not be able to meet the solicitation's short delivery schedule and thus was nonresponsible.

2. An agency is not required to conduct a preaward survey if information on hand or readily available is sufficient to allow the contracting officer to make a responsibility determination.

DECISION

Victor Graphics, Inc. protests the Government Printing Office's (GPO) nonresponsibility determination under an invitation for bids (IFB) designated as Program C264-S, providing for publication of Index Medicus. Victor maintains that it is in fact responsible.

We deny the protest.

The solicitation, issued May 1, 1992, provided for award of a 1-year requirements contract to produce approximately 7,000 to 10,500 monthly issues of Index Medicus, a guide to current biomedical research published by the National Library of Medicine (NLM), Department of Health and Human Services (HHS). The IFB called for shipment of the finished publication--approximately 2,000 pages per month, bound in 2 volumes--within 27 workdays from receipt of government-furnished material. At bid opening on June 8, Victor's bid of \$827,095.01 was low; the second low bid of \$855,764.24

was submitted by United Book Press, Inc. Prior to making award, GPO determined that in the preceding 3 months--March, April, and May--Victor had a delinquency rate of 29 percent under 30 GPO contracts. Based on this recent performance history, GPO concluded that Victor was nonresponsible, and on June 23 it awarded a contract to United. This protest followed.

Victor contends that GPO improperly failed to consider all pertinent information in making its negative responsibility determination. According to Victor, GPO ignored the fact that the firm successfully had published Index Medicus under the C264-S program from 1983 to 1989, and instead considered Victor's recent performance under contracts not directly relevant, since they did not involve equipment that would be used for this contract. In addition, Victor explains that its late deliveries were caused by "random factors" which have since been eliminated, and disputes GPO's conclusion that its delinquency rate on the contracts was 29 percent; Victor maintains it was delinquent on only 6 out of 30 orders, for a delinquency rate of 20 percent. Victor concludes that, by failing to contact it concerning these matters or to conduct a preaward survey, GPO improperly based its determination on inadequate information.

Since a nonresponsibility determination is essentially a matter of business judgment and encompasses a wide degree of discretion, we generally will not question such a determination absent a showing of bad faith by the contracting agency or the lack of any reasonable basis for it. Metalcastello s.r.l., B-244510, Oct. 21, 1991, 91-2 CPD ¶ 350. A nonresponsibility determination may be based upon the procuring agency's reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts. Id.; Becker and Schwindenhammer, GmbH, B-225396, Mar. 2, 1987, 87-1 CPD ¶ 235. We generally will not disturb a determination that a firm is nonresponsible when that determination is reasonably based on a recent history of late deliveries. Johnson Graphic Indus. Inc., B-205070, May 3, 1982, 82-1 CPD ¶ 409.

As Victor does not allege bad faith on the part of GPO, the only issue is whether GPO's determination had a reasonable basis. The record contains a letter from NLM's director concerning the need for prompt delivery:

"Index Medicus is used throughout the world to point . . . researchers, physicians, and . . . health professionals to the latest findings in medicine. Any delay in publication will delay transmission of vitally important research findings, with potentially dire consequences for patients throughout the world."

The record also shows that the contracting officer relied on information in GPO's Contractor Performance History database which indicated that Victor had a recent delinquency rate of 29 percent; based on that information, GPO concluded there was an unacceptably high probability that Victor would be late with deliveries of Index Medicus as well. In light of the short production times under this contract--delivery within 27 workdays each month--we find nothing unreasonable in GPO's conclusion that Victor therefore was nonresponsible.


Although Victor claims that the correct delinquency rate was 20 percent rather than 29 percent, GPO explains that, given the nature of this procurement, the lower rate (if accurate) also indicates too high a likelihood of late deliveries. Again, we find this conclusion reasonable; whether the precise delinquency rate was 20 or 29 percent, GPO had a reasonable basis for concluding that Victor had been late on a substantial number of deliveries, and that this performance history cast the firm's ability to timely perform under the current contract into doubt. Our conclusion is consistent with our holding in Johnson Graphic Indus. Inc., supra, which also involved a finding of delinquent past performance where there was a short delivery schedule. As we explained there:

"One of the important elements of a bidder's responsibility is the capability to perform in accordance with the requirements set forth in the solicitation. Leasco Info. Prods., Inc., et al., 53 Comp. Gen. 932 (1974), 74-1 CPD ¶ 314. Since timely delivery is an important requirement in any solicitation, we see no basis to object to GPO's determination, based on a preaward review of [the protester's] past performance record that disclosed recent delivery delinquencies, that [the protester] was nonresponsible, especially in view of the short delivery schedule imposed by the Postal Service and therefore required in GPO's solicitation." Johnson Graphic Indus., Inc., supra.

Victor's argument that a preaward survey should have been conducted is without merit. Preaward surveys are not a prerequisite to determinations of responsibility; an agency properly may rely on other available information, as GPO did here. Metalcastello s.r.l., supra (delivery capability report on potential contractor's recent performance provided basis for nonresponsibility determination). Similarly, GPO was not required to contact Victor prior to making its determination; a contracting officer may base a negative determination of responsibility on evidence in the record, without affording offerors the opportunity to explain or

otherwise defend against the evidence. Id. Consequently, we find no impropriety in the fact that GPO did not consult the protester prior to making its determination.

The protest is denied.


for James F. Hinchman
General Counsel